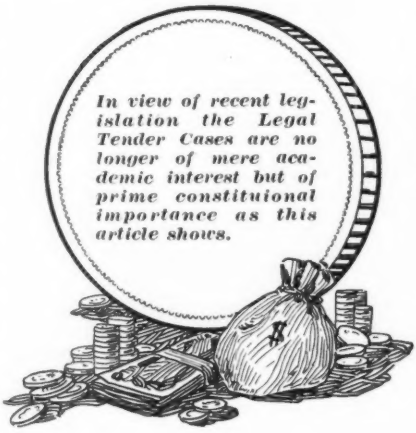
The Gold Clause Problem

BY GEORGE R. BUNDICK



ACCORDING to statements in current English legal periodicals (49 Times L. R. 344, 175 L. T. Jo. 226) the English Court of Appeal has, by a decision of March 17, 1933, affirmed a decision of Farwell, J., in the Chancery Division, which refused to give effect to the gold provision feature of a bond, governed by the English law, providing for payment of "£100 in sterling in gold coin of the United Kingdom, of or equal to the standard of weight and fineness existing on September 1, 1928," and held that the obligation could be discharged in any medium that was legal tender at maturity. The full text of the opinions in the Court of Appeal is not at this time available.

From the informal reports available it seems that the court based its decision on the construction of the contract, hence its chief value in determining the validity of the present so-called inflationary legislation lies in its suggestion of an avenue of escape from the embarrassment of the gold clause in contracts and bonds.

However, an examination of the second Legal Tender Cases, 12 Wall. 457–681, 20 L. ed. 288, discloses that the constitutionality of the recent legislation might well be grounded on the doctrine of those cases. A few of the many pertinent points follow:

In commenting on the degree of appropriateness of the measure the court said: "Before we can hold the Legal Tender Acts unconstitutional, we must be convinced they were not appropriate means, or means conducive to the execution of any or all of the powers of Congress, or of the government, not appropriate in any degree (for we are not judges of the degree of appropriateness), or we must hold that they were prohibited. . . . Is it our province to decide that the means selected were beyond the constitutional power of Congress, because we may think that other means to the same ends would

have been more appropriate and equally efficient? That would be to assume legislative power, and to disregard the accepted rules for construing the Constitution. The degree of the necessity for any congressional enactment, or the relative degree of its appropriateness, if it have any appropriateness, is for consideration in Congress, not here."

In passing upon the point that the United States may impair the obligation of contract by legislation the court said: "It is not claimed that any express prohibition exists." (It is to be observed that the provision of the Fourteenth Amendment that no state shall impair the obligation of contract is a limitation on the power of the state and not applicable to the federal government, although in effect at the time of this decision it was not mentioned in the decision.)

On this point the court continued, "We come next to the argument much used, and, indeed, the main reliance of those who assert the unconstitutionality of the Legal Tender Acts. It is that they are prohibited by the spirit of the Constitution because they indirectly impair the obligation of contracts. . . . The argument assumes two things—first, that the Acts do, in effect, impair the obligation of contracts, and, second, that Congress is prohibited from taking any action which may indirectly have that effect. Neither of these assumptions can be accepted. . . . We have been asked whether Congress can declare that a contract to deliver a quantity of grain may be satisfied by the tender of a less quantity. Undoubtedly not. But this is a false analogy. There is a wide distinction between a tender of quantities, or of specific articles, and a tender of legal values. Contracts for the delivery of specific articles belong exclusively to the domain of state legislation, while contracts for the payment of money are subject to the authority of Congress, at least so far as relates to the means of payment. They are engagements to pay with lawful money of the United States, and Congress is empowered to regulate that money. It cannot, therefore, be maintained that the Legal Tender Acts impaired the obligation of contracts. . . . As in a state of civil society, property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government and no obligation of a contract can extend to the defeat of legitimate government authority."

To the objection that the acts violated the due process of law clause of the Fifth Amendment the court said: "Closely allied to the objection we have just been considering, is the argument pressed upon us that the Legal Tender Acts were prohibited by the spirit of the Fifth Amendment, which forbids taking private property for public use without just compensation or due process of law. That provision has always been understood as referring only to a direct appropriation and not to conse-

quential injuries resulting from the exercise of lawful power. It has never been supposed to have any bearing upon or to inhibit laws that indirectly work harm and loss to individuals. A new tariff, an embargo, a draft, or a war, may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless."

(It is to be noted that this principle of the Legal Tender Cases was approved in Louisville R. Co. v. Mottley, 219 U. S. 482, 484, 34 L.R.A.(N.S.) 671, 55 L. ed. 303, 304, upholding right of Congress to enact Act of June 26, 1906, § 6, which rendered unenforceable prior contract of carrier to issue annual passes for life. This principle was again recognized in Omnia Com. Co. v. United States, 261 U. S. 509, 67 L. ed. 776, holding that loss to one having contract for product of mill by requisitioning of mill by government for war purposes need not be compensated.)

It is important to clear thinking to remember that the Legal Tender Cases decide two points; first that the Acts are constitutional as applied to contracts made either before or after passage, and second, that they apply only to contracts payable in money generally. That the second point is one of pure construction unconnected with the first point is clearly shown by the following quotation from Justice Bradley's concurring opinion, he differing from the majority on the second point. He says: "It makes no difference in the principle of the thing, that the contract of the debtor is a specific engagement, in terms, to pay gold or silver money, or to pay in specie. So long as the money of the country, in whatever terms described, is in contemplation of the parties, it is the object of the legal tender laws to make the credit of the government a lawful substitute therefor. If the contract is for the delivery of a chattel or a specific commodity or substance, the law does not apply. If it is bona fide for so many carats of diamonds or so many ounces of gold as bullion, the specific contract must be performed. But if terms which naturally import such a contract are used by way of evasion, and money only is intended, the law reaches the case. Not but that Congress might limit the operation of the law in any way it pleased. . . . I differ from my brethren in the decision of one of the cases now before the court, to wit: the case of Trebilcock v. Wilson, 12 Wall. (U. S.) 687, 19 L. ed. 460, in which the promise (made in June, 1861, was to pay, one year after date, the sum of $900, with ten per cent. interest from date, payable in specie. Of course this difference arises from the different construction given to the Legal Tender Acts. I do not understand the majority of the court to decide that an Act so drawn so as to embrace, in terms, contracts payable in specie, would not be constitutional. Such a decision would completely nullify the power claimed for the government. For it would be very easy, by the use

of one or two additional words, to make all contracts payable in specie."

It is regrettable that space limitation prevents a reproduction of the powerful economic arguments of Justice Bradley in this concurring opinion. It would, however, be impossible to improve on the stirring conclusion of that eminent jurist: "It would be sad, indeed, if this great nation were now to be deprived of a power so necessary to enable it to protect its own existence, and to cope with the other great powers of the world. No doubt foreign powers would rejoice if we should deny the power. No doubt foreign creditors would rejoice. They have from the first, taken a deep interest in the question. But no true friend to our Government, to its stability, and its power to sustain itself under all vicissitudes, can be indifferent to the great wrong which it would sustain by a denial of the power in question—a power to be seldom exercised, certainly; but one, the possession of which is so essential, and as it seems to me, so undoubted." Attention is called to a scholarly article in 42 Yale Law Journal 1051, the Gold Clause in Private Contracts by George Nebalsine.

See also Professor Hanna's discussion of Federal Currency Restriction and Gold Contracts (June, 1933) 19 American Bar Association Journal, 349.

For Construction of Gold Coin Clauses, see annotation in 84 A.L.R. 1499.

Judicial Horticulture

"THE common law is a growing tree; its principles must be continually adapted to new facts, and the changing conditions of modern life. Only the legislature can grub it up, but the courts are charged with the duty of pruning its branches, and sometimes grafting a new scion on the old stock." Noyes, P. J., in the trial court in Hague v. Wheeler (1893) 157 Pa. 324, 333, 22 L.R.A. 141, 37 Am. St. Rep. 736, 27 Atl. 714.

Shall China Have An Uniform Legal System?

BY CHARLES SUMNER LOBINGIER,
Judge U. S. Court for China—1914–1924 [1]

Non erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et apud omnes gentes, et omni tempore una lex et sempiterna, et immortalis, continebit. Cicero, De Republica.

SENATOR Thomas of Utah, who lived five years in the Orient and knows conditions there first hand, has introduced a bill (S 1784) to promote uniformity of law in China. Such at least will be its effect, if enacted; for it proposes to require the United States Court sitting there to apply the local law, viz., the new Chinese codes. That would constitute the first practical step toward the ultimate, and long sought, abolition of extraterritoriality. This lengthy word, which some have sought to shorten into "extrality" (apparently on the analogy of the rule proposed by an American engineer to reform the Russian language by omitting every other syllable) connotes the system by which foreigners in that country remain subject to the laws and courts of their own. Most of our readers know that strenuous efforts have been made by the Chinese authorities, in recent years, to abolish it. Not so many know enough of its actual workings and details to form an intelligent opinion either as to the merits of the controversy or as to the problem's best solution. First of all it must be remembered that Extraterritoriality (though not always under that name) is very ancient in China. It is said [2] that about 720 A. D. a maritime tribunal, similar to that of the admiral in Europe, including the jurisdiction to decide controversies among foreign merchants, existed in that country. Extraterritoriality by treaty, however, came nearly a thousand years later,[3] beginning with the Russo-Chinese convention of 1689. And "in its historical beginnings," observes Hinckley,[4] "the grant of ex-

[1] First to serve the full term of ten years.

[2] Journ. Asiatique, V, 420, cit. Miltitz, Manuel del Consuls (1837), 162 n. See also my "Quarter Century of Our Extraterritorial Court," Georgetown Law Journal, XX, 427.

[3] Ib.

[4] American Consular Jurisdiction in the Orient (1907) 17.

Bar of the United States Court for China assembled to present shield (on table) to Judge Lobingier (on bench, center) on completion of twenty years of judicial service.

traterritorial jurisdiction was not considered a disparagement to the sovereignty of the state that granted it." Rather did the Chinese authorities of that day welcome it as a relief from the annoyance and responsibility for foreign offenders and disputes.[5] It is only since, in recent years, the Chinese began to travel and study in western countries, that they have come to regard the system as a mark of inferiority.

Undoubtedly the greatest evil of Extraterritoriality is the conflict and confusion of legal systems. With seventeen or more nations each applying its own laws, any approach to legal uniformity is impossible. The situation is bad enough in civil matters. A merchant in China takes a different risk with each foreign customer. But it is infinitely worse as regards police and criminal jurisdiction. In Shanghai, *e. g.*, the Chinese authorities appeared to have made a genuine effort to suppress gambling. But they could reach only their own nationals; large scale gambling passed at once into foreign hands and the notorious casino, known as the "Wheel," continued to operate under a Spanish manager whose consul is said to have declared that such an institution was not forbidden by the laws of his country. Clearly such conditions can be removed only by substituting one meritorious legal system for all China and subjecting all of its inhabitants thereto. Clearly, too, the natural and logical substitute system would be Chinese.

[5] See Lane-Poole, Life of Sir Harry Parkes (1894) II, 314.

It is now thirty years since the United States government obligated itself

> "to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing." [6]

It will be seen that three factors are here recognized as fixing the time of relinquishment, viz., (1) "the Chinese laws," (2) "their administration" and (3) "other considerations." But there is nothing to indicate that our government must be satisfied as to all three before taking any further step. If, *e. g.*, it is satisfied as to the Chinese laws, there is nothing to prevent it from accepting them as applicable to its nationals in China, leaving the question of "their (the laws') administration" and "other considerations" to be determined later. That would constitute progressive abolition and there is much to be said in its favor as will be indicated later on. But the first question would still be "the state of the Chinese laws."

The New Legislation

Now it is well known to all those familiar with the subject that, during most of the present century, Chinese jurists, with foreign aid, have been at work upon the restatement and modernization of their legal system. Indeed, one of them [7] claims that China "has accomplished so

[6] Treaty of 1903, art. XV, U. S. Foreign Relations (1903) 98.

[7] Judge F. T. Feng in the China Law Review, IV, 117.

much within so short a time that her record may well be termed Justinian." In 1909 a Penal Code came provisionally into force. It was modelled largely on the Japanese which in turn had followed the German, and was applied by the International Mixed Court at Shanghai during the whole decade of my service in China. A "second revised draft" appeared in 1919 and, according to the Extraterritoriality Commission of 1926, met most of its criticisms of the first draft. Since Sept. 1, 1929, a new Criminal Code has been in force, based on the second draft above mentioned and

> "framed in the light of the Hungarian Crimial Code of 1878, the German Criminal Code of 1871, the Dutch Criminal Code of 1881, the Italian Criminal Code [8] of 1889, the Egyptian Criminal Code of 1904, the Siamese Criminal Code of 1898 and the Japanese Criminal Code of 1907." [9]

I have seen nothing to indicate that this product of two decades of experiment and study, with such a wide use of models, should not be as acceptable to Americans residing in China as the so-called Federal Penal Code, though supplemented by the mass of penal legislation which our Congress has enacted for the District of Columbia and Alaska; but which, often with misgivings, our courts in China seek to apply.[10]

Next in importance is the Civil Code,[11] in force since 1930 and containing the private, substantive law. This likewise goes back to the German model (*Das Gesetzbuch*); but, as in the case of the Criminal Code, its framers announce that they have used many others and they seem to have avoided a complete break with China's legal past by providing (Art. I)

> "In civil matters if there is no provision of law applicable to a case the case shall be decided according to custom. If there is no such custom, the case shall be decided in accordance with the general principles of law."

I have examined this instrument with some care [12] and have yet to find a feature of it which a properly trained judge need hesitate in applying or which should prove objectionable to any foreign resident in China. The United States Supreme Court and the Courts of Appeals of the first and ninth circuits already construe similar codes in cases from Louisiana, Porto Rico, Panama Canal Zone and the Philippines. Then there are Chinese Codes of Civil and of Criminal Procedure, a considerable body of commercial legislation,[13] a Code of Maritime Law,[14]

(*Continued on page twenty-one*)

[8] A notably scientific instrument.

[9] Judge Feng, *ubi supra.*

[10] U. S. v. Diaz, 1 Extrater. Cases, 784; Ezra v. Merriman, id. 809.

[11] See the English translation by Ching-Lin Hsia, James L. E. Chow and Y Yukon Chang (Shanghai, 1930).

[12] See my review of it in American Journal of International Law, XXIV, 8.

[13] See e. g., the Chinese Law on Negotiable Instruments, promulgated Oct. 30, 1929, translated by Hao-Hsuan Sun, and the Law of Insurance.

[14] In force since Jan. 1, 1931. See Chinese text with English translation by John McNeill and Dr. Wei Wen-Han.

Among the New Decisions

Account stated — *bare statement of balance.* In Reed v. Thomas, 134 Kan. 849, 84 A.L.R. 110, 8 Pac. (2d) 379, it was held that the bare statement of a balance due, if accepted as correct, may constitute an account stated, even if it is not accompanied by an account of the items, under the rule that, if a fixed and certain sum is admitted to be due for which an action would lie, that will be evidence to support a claim on an account stated.

Annotation: May account stated be predicated on rendition and acceptance of a bare statement of balance due without enumeration of original items. 84 A.L.R. 114.

Adults — *adoption of.* In State v. Calhoun, — Mo. —, 83 A.L.R. 1393, 52 S. W. (2d) 742, it was held that an adult may be adopted as the child of another person under an adoption statute which, in using the term "child" interchangeably with "person" and as signifying relation to a parent, and by requiring the written consent of the parent or guardian to the adoption of a person under the age of twenty-one, implies that the adoption statute is not limited to minors.

Annotation: Statute in relation to adoption as authorizing adoption of adult. 83 A.L.R. 1395.

Aeroplane — *trespass by.* In Swetland v. Curtiss Airports Corporation, 55 F. (2d) 201, 83 A.L.R. 319, it was held that the flying of an aeroplane over another's land is not necessarily a trespass.

Annotation: Aeroplanes and areonautics. 83 A.L.R. 333.

Age — *computation under insurance policy.* In Wilson v. Mid-Continental Life Insurance Company, — Okla. —, 84 A.L.R. 386, 14 Pac. (2d) 945, it was held that a person not over the age of sixty-five years, within the meaning of an insurance policy providing, "The insurance under this policy shall not cover any person under the age of eighteen years nor over the age of sixty five years, . . ." until he has reached his sixty-sixth birthday, and fractions of a year should not be considered.

Annotation: When one deemed to have attained or passed age specified in insurance policy. 84 A.L.R. 389.

Alimony — *specific performance of agreement.* In Apfelbaum v. Apfelbaum, 111 N. J. Eq. 529, 84 A.L.R.

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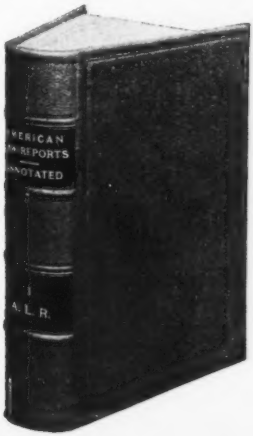


298, 162 Atl. 543, it was held that an agreement to pay a divorced wife as alimony a greater amount than that fixed by the decree is not specifically enforceable, even though made to induce the wife to relinquish her purpose of applying to the court for an increase.

Annotation: Validity and enforceability of agreement to pay more or less alimony than that provided for by decree or order. 84 A.L.R. 299.

Amendments — *submission to people.* In Spriggs v. Clark, — Wyo. —, 83 A.L.R. 1364, 14 Pac. (2d) 667, it was held that submission to the electors of a state, of the question whether a provision of the Federal Constitution shall be repealed, is not beyond the powers of the state legislature as involving a disregard of the provisions of Art. 5 of the Federal Constitution as to the mode in which amendments may be proposed and adopted.

Annotation: Judicial decisions relating to adoption or repeal of amendments to Federal Constitution. 83 A.L.R. 1374.

Appeal and error — *cure of error.* In Pollard v. State, 201 Ind. 180, 84 A.L.R. 779, 166 N. E. 654, it was held that error on the part of the prosecuting attorney in adverting to the failure of accused to testify is cured where the court, on objection being made, instructed the jury that the statement was improper and should not be considered by them for any purpose, and that no presumption might be drawn from defendant's failure to testify.

Annotation: Prosecuting attorney's reference to defendant's failure to testify as prejudicial. 84 A.L.R. 784.

Attorneys — *collecting debts as practice of law.* In Bernard Berk v. State of Alabama ex rel. R. Dupont Thompson, 225 Ala. 324, 84 A.L.R. 740, 142 So. 832, it was held that one who conducts a commercial collection agency, contracting with his patrons to turn claims over to his lawyer for legal proceedings when in his judgment such proceedings are necessary, exacting fees from the makers of notes under provisions therein for the collection of costs, including a reasonable attorney's fee, and threatening debtors with legal proceedings, is engaged in the practice of law within the meaning of a statute requiring licenses to practise law and defining the practice of law as including the vocation of enforcing, securing, settling, adjusting, or compromising defaulted, controverted, or disputed accounts, claims, or demands.

Annotation: Making collections as practice of law. 84 A.L.R. 749.

Automobile Association — *trademark of.* In American Automobile Association v. American Automobile Owners' Association, — Cal. —, 83 A.L.R. 699, 13 Pac. (2d) 707, it was held that the words "American Automobile" are common property which may be used in the name of any automobile association in combination with other descriptive words, provided they are not used in combination with such other words or symbols or designs as to render it probable that they will mislead persons possessing ordinary powers of perception.

Annotation: Right of automobile association to exclusive use of name or insignia. 83 A.L.R. 712.

Banks — *enforcement of assessment of stockholders.* In Hudson v. Bank of Waldo, — Fla. —, 83 A.L.R. 887, 141 So. 750, it was held that where a statute relative to assessments on bank stockholders to rehabilitate impaired capital provides only for a sale of stock in case of neglect or re-

fusal of a stockholder to pay an assessment, such method of enforcing liability is exclusive and precludes the maintenance of a personal action against the stockholder for the amount of the assessment.

Annotation: Exclusiveness of statutory remedy of sale or forfeiture of stock to enforce liability for assessment. 83 A.L.R. 892.

Conditional sales — *novation upon repossession.* In Davis v. International Harvester Company, 110 W. Va. 121, 83 A.L.R. 994, 157 S. E. 584, it was held that the statutory right of a purchaser under a conditional sales contract to recover from the seller failing to make sale of the property repossessed on default within the time and in the manner specified by the statute, damages to be not less than one fourth of the sum of all payments made under the contract, with interest, is waived where, after a previous default and repossession, the purchaser executed a new conditional sales note for the amount of the unpaid balance, which recited that it contained the entire agreement between the parties, such new note amounting to a novation of the original contract.

Annotation: Applicability of protective provisions of Uniform Conditional Sales Act or similar statutes where there has been a novation of the contract. 83 A.L.R. 998.

Conflict of laws — *injury to guest in automobile.* In Loranger v. Nadeau, 215 Cal. 362, 84 A.L.R. 1264, 10 Pac. (2d) 63, it was held that the courts of a state in which a guest in an automobile is precluded by statute from recovering against a driver except for gross negligence may entertain a suit by the guest against a driver arising out of an accident in another state by the law of which the driver is liable to the guest for ordinary negligence.

Annotation: Differences with respect to degree or criterion of negligence, between lex loci delicti and lex fori, as ground for refusal to entertain action for foreign tort. 84 A.L.R. 1268.

Constitutional law — *increase of assessment without notice.* In Harriet Beveridge v. B. W. Baer, — S. D. —, 84 A.L.R. 189, 241 N. W. 727, it was held that a statute giving a reviewing board power to increase individual assessments without notice to the taxpayer, or provision for review, is unconstitutional as denying due process.

Annotation: Notice to property owners of increase in assessment or valuation by board of equalization or review. 84 A.L.R. 197.

Constitutional law — *settlement of claim.* In Peterson v. Panovitz, 62 N. D. 328, 84 A.L.R. 1290, 243 N. W. 798, it was held that a person who is liable in damages for personal injuries sustained by another is not deprived of his property without due process, or denied the equal protection of the laws, guaranteed to him by § 13 of the Constitution of the state of North Dakota and the Fourteenth Amendment to the Constitution of the United States by chapter 179, Laws 1917 (§§ 5941a1, 5941a2, Comp. Laws Supp. 1925), which provides that "every settlement or adjustment of any cause of action and every contract of retainer or employment to prosecute an action for damages on account of any personal injuries received . . . shall be voidable if made, while the person so injured is under disability from the effect of the injuries so received, or if made within thirty days after the date of such injury."

Annotation: Constitutionality of statute relating to release of, or contract of employment for the enforcement of, claims for personal injuries or death, or invalidating contracts exonerating an employer from liability in respect of injury to employee. 84 A.L.R. 1297.

Contracts — *effect of wrong to third person.* In Reiner v. North American Newspaper Alliance, 259 N. Y. 250, 83 A.L.R. 23, 181 N. E. 561, it was held that the stipulated compensation for a contract to furnish news of a transatlantic airship voyage may not be recovered where the one contracting to furnish the news knew that performance would involve a breach of the terms of his contract of passage and interfere with a contract whereby the owners of the airship had agreed that a third person should have the exclusive news rights.

Annotation: Validity and enforceability of contract the making or performance of which involves breach of a contract made by one of the parties with a third person or impairs his ability to perform such contract. 83 A.L.R. 32.

Corporate Director — *purchase from stockholder.* In Lightner v. W. H. Hill Company, 258 Mich. 50, 84 A.L.R. 601, 242 N. W. 218, it was held that where one who dominated a corporation and was thoroughly conversant with its affairs, knowing that a stockholder therein wished to dispose of his stock, misrepresented the value of such stock with a view to obtaining it for himself at his own figure, and was thereby enabled to purchase it for about one fifth of its value, the sale may be rescinded.

Annotation: Duty of officer or director of corporation toward one from whom he purchases stock. 84 A.L.R. 615.

Damages — *discharge of employee.* In Rench v. Hayes Equipment Manufacturing Company, 134 Kan. 865, 84 A.L.R. 166, 8 Pac. (2d) 346, it was held that in an action for damages for wrongful discharge from employment, plaintiff's measure of damages under the circumstances of this case included the amount he lost in salary between the date of his discharge and the date when he secured other employment; and it also included reimbursement for his necessary and reasonable expenses incurred in searching for other employment; but it did not include plaintiff's expenses in coming from his home in Wisconsin to his place of employment in Kansas nor in returning thereto after his wrongful discharge.

Annotation: Expenses incurred in seeking or in obtaining other employment as element of damages in an action for wrongful discharge of employee. 84 A.L.R. 171.

Declarations — *suicidal disposition of victim.* In Bowie v. State, 185 Ark. 834, 83 A.L.R. 426, 49 S. W. (2d) 1049, it was held that on a trial for murder by poison, declarations of the deceased, over a period of six months preceding her death, expressing dissatisfaction with life and intimating that she might end it, are admissible.

Annotation: Admissibility in prosecution for homicide of declarations indicating suicidal disposition on part of deceased. 83 A.L.R. 434.

Electric wires — *duty as to.* In Mississippi Power Company v. Thomas, 162 Miss. 734, 84 A.L.R. 679, 140 So. 227, it was held that it is continuing duty of electric company to maintain wires over streets in manner not dangerous to persons and property (Code 1930, § 1506).

Annotation: Duty and liability in respect of sagging of electric wire maintained over highway. 84 A.L.R. 690.

Evidence — *account books as to loan.* In Cross v. Amoretti, 44 Wyo. 175, 84 A.L.R. 140, 9 Pac. (2d) 147, it was held that a lender's daybook and ledger containing charges for loans of considerable amounts are inadmissible in evidence to establish the making of the loans, in the absence of other and competent evidence reasonably identifying defendant as the borrower.

Annotation: Admissibility of book accounts to prove loans or payments by person by or for whom they are kept. 84 A.L.R. 147.

Evidence — *declarations of grantor.* In Cooke v. Wilbanks, 223 Ala. 312, 83 A.L.R. 1441, 135 So. 435, it was held that declarations of a transferrer of property in fraud of creditors, in the presence of the transferee, as to their relations in the property transferred, made during the pendency of the common and fraudulent design and within its scope and purpose, are competent whether made before or after such fraudulent transfer, if made after the collusion and before the common design is accomplished or abandoned.

Annotation: Admissibility of declarations of grantor or transferrer on issue as to whether conveyance or transfer was in fraud of creditors. 83 A.L.R. 1446.

Evidence — *reputation of associate of defendant.* In Commonwealth v. Bezko, — Mass. —, 83 A.L.R. 1398, 182 N. E. 639, it was held that in a prosecution for keeping intoxicating liquor to sell contrary to law and for maintaining a liquor nuisance, evidence is admissible that a person who was seen to drive a motor vehicle into the yard of defendant's premises on three occasions during one night is generally reputed in the community to be a bootlegger.

Annotation: Admissibility, in prosecution for violation of intoxicating liquor law, or general reputation of person with whom defendant had dealings, as tending to show such violation. 83 A.L.R. 1401.

Executors — *commissions of.* In Re Leonard, 202 Wis. 117, 83 A.L.R. 712, 230 N. W. 715, it was held that when an executor or administrator has been derelict in his duty, the matter of an allowance for his necessary expenses and services and for commissions is within the sound discretion of the court.

Annotation: Right of executor or administrator to commissions as affected by faults in administration. 83 A.L.R. 726.

Extradition — *identification.* In Lee Gim Bor v. Ferrari, 55 F. (2d) 86, 84 A.L.R. 329, it was held that unless the indictment on which a demand for extradition is based names or describes the person demanded so that he may be identified, no warrant of arrest can properly issue.

Annotation: Necessity and sufficiency of identification of accused as the person charged, to warrant extradition. 84 A.L.R. 337.

Federal Grain Futures Act — *effect on state legislation.* In Dickson

v. Uhlmann Grain Company, — U. S. —, 77 L. ed. (Adv. 464), 83 A.L.R. 492, 53 S. Ct. —, it was held that a state law making gambling in grain futures illegal is not superseded by the Federal Grain Futures Act of September 21, 1922, chap. 369, 42 Stat. at L. 998, so as to render lawful transactions in which the requirements of the Grain Futures Act have been met.

Annotation: Validity of transactions in futures. 83 A.L.R. 522.

Filling station — *termination of lease.* In Shell Petroleum Corporation v. Ford, 255 Mich. 105, 83 A.L.R. 1413, 237 N. W. 378, it was held that the termination of the employment of one who, by an instrument entitled "Lease and Contract of Employment," has leased a filling station and agreed to operate it for the lessee, does not operate to terminate the lease, where the lease is for a definite term and there is nothing in the instrument to indicate that the continuation of the lease depends upon the continuance of the employment, and the only cancelation clause in the instrument permits either party to terminate upon notice "the employment herein agreed upon."

Annotation: Rights and remedies of parties in respect to lease of filling station. 83 A.L.R. 1416.

Finger prints — *right to take.* In United States v. Kelly, 55 F. (2d) 67, 83 A.L.R. 122, it was held that finger prints of one charged with an unlawful sale of liquor may lawfully be taken by Federal officers at the time of arrest, even in the absence of a state or Federal statute authorizing them to be so taken.

Annotation: Right to take finger prints and photographs of accused before trial, or to retain same in police record after acquittal or discharge of accused. 83 A.L.R. 127.

Garnishment — *pledgeor's interest.* In Bank of Centerville v. Gelhaus, — S. D. —, 83 A.L.R. 1380, 242 N. W. 642, it was held that the interest of a pledgeor in a note held as security by the pledgee is garnishable under a statute permitting the garnishment of any person who shall have any property whatever in his possession or under his control belonging to the debtor.

Annotation: Interest of mortgagor or pledgeor in property in possession of mortgagee or pledgee as subject of garnishment. 83 A.L.R. 1383.

Guaranty — *collection and payment.* In Ludington Lumber Company v. Metropolitan National Bank, 55 F. (2d) 169, 84 A.L.R. 287, it was held that a guaranty of "collection and payment" is a guaranty of payment as well as collection, entitling the holder of the obligation to sue the guarantor without first exhausting his remedies against the principal debtor.

Annotation: Guaranty of "collection and payment" as independent guaranty of payment or only of payment through collection. 84 A.L.R. 289.

Insurance — *by agent on own property.* In National Fire Insurance Co. v. Llewellyn, 142 Okla. 272, 83 A.L.R. 1502, 286 Pac. 792, it was held that antecedent authority in an agent of an insurance company to bind the company by the issuance of a policy on the agent's own property may be inferred from the insurer's acquiescence in the agent's issuance of previous policies on the property in question, and other policies on his own property.

Annotation: Insurance by agent on his own property. 83 A.L.R. 1509.

Judge — *communication with jury.* In Hunsicker v. Waidelich, 302 Pa. 224, 84 A.L.R. 211, 153 Atl. 335, it was held that the trial judge should

not, under any circumstances, enter the jury room, however innocent and proper the purpose may be.

Annotation: Right of court to instruct or to communicate with jury in civil case in absence of counsel. 84 A.L.R. 220.

Landlord and tenant — *injury to tenant's property.* In Kirshenbaum v. General Outdoor Advertising Company, 258 N. Y. 489, 84 A.L.R. 645, 180 N. E. 245, it was held that a provision in a lease of a building exonerating the lessor from liability to the lessee for any injury caused by or resulting from steam, electricity, gas, water, rain, ice, or snow which may leak or flow from or into any part of the leased building, whether or not through the negligence of the lessor or his agent or employee, relieves the lessor from any obligation to make repairs which might otherwise have arisen upon a defect having been called to his attention.

Annotation: Validity, construction, application and effect of provision of lease exempting landlord from liability on account of condition of property. 84 A.L.R. 654.

Mechanic's lien — *land subject.* In Livesay v. Lee Hing, 139 Or. 450, 84 A.L.R. 118, 9 Pac. (2d) 133, it was held that a materialman's lien on a hop house may not be extended to the whole of the 163-acre farm on which it stands, under a statute subjecting to such lien so much space about the building in which the materials were used as may be required for its use and occupation.

Annotation: Construction, application, and effect of provision of mechanic's lien statute as to quantity or area of land around improvement which may be subjected to the lien. 84 A.L.R. 123.

Moving pictures — *as evidence.* In State v. United Railways & Electric Co. 162 Md. 404, 83 A.L.R. 1307, 159 Atl. 916, it was held that the use of moving pictures for the purpose of placing facts before a jury should be left largely to the judgment and discretion of the presiding judge.

Annotation: Use of moving pictures as evidence. 83 A.L.R. 1315.

Municipal corporations — *employment of attorney.* In Meeske v. Baumann, 122 Neb. 786, 83 A.L.R. 131, 241 N. W. 550, it was held that power of a city to sue and defend implies power to employ counsel for those purposes.

Annotation: Power of municipal corporation to employ attorney. 83 A.L.R. 135.

Municipal corporations — *implied contract to pay.* In Tobin v. Town Council of the Town of the City of Sundance, — Wyo. —, 84 A.L.R. 902, 17 Pac. (2d) 666, it was held that a municipality is not liable upon an implied contract for work and materials furnished under a street improvement contract which is invalid as having been let without first advertising for bids.

Annotation: Liability of municipality or other governmental body on implied or quasi contract for value of property or work. 84 A.L.R. 936.

Picketing — *what constitutes.* In Crouch v. Central Labor Council, 134 Or. 612, 83 A.L.R. 193, 293 Pac. 729, it was held that the presence in the street in the immediate vicinity of a restaurant whose proprietor has declined to contract with culinary unions, or to adopt the hours of work and scale of wages favored by such unions, of a woman holding in her hands a copy of a labor journal in such a way as to display to passers-by a statement

in large type that the employees of the restaurant work seven days a week, and that culinary unions are appealing to the public to rebuke such practice, constitutes picketing.

Annotation: What amounts to picketing. 83 A.L.R. 200.

Policemen — *as public officers.* In State v. Fousek, 91 Mont. 448, 84 A.L.R. 303, 8 Pac. (2d) 791, it was held that a member of a police board of a city is an incumbent of an office within the meaning of a statute providing that an office becomes vacant upon the incumbent's conviction of a felony during his term.

Annotation: Policemen as public officers. 84 A.L.R. 309.

Presumptions — *due care by person killed.* In Lamp v. Pennsylvania Railroad Company, 305 Pa. 520, 84 A.L.R. 1217, 158 Atl. 269, it was held that a person who was killed by a train at a railroad crossing is presumed to have used due care under the circumstances.

Annotation: Presumption as to due care by person killed at railroad crossing. 84 A.L.R. 1221.

Railroads — *fee or easement in right of way.* In Brightwell v. International-Great Northern Railroad Company, — Tex. —, 84 A.L.R. 265, 49 S. W. (2d) 437, it was held that a general warranty deed purporting to convey to a railroad company a strip 200 feet in width "over" certain described lands of the grantor conveys a fee simple, rather than a mere easement or right of way, notwithstanding a further grant therein of "such earth, material, timber, and rock as may be found on my land herein mentioned and granted herein as right of way which may be required for the construction of said railroad," the term

"over" evidently meaning from one side of the grantor's land to the other, and the reference to the land "granted herein as right of way" being explainable as confining to the land granted a right which otherwise would have extended to lands other than the 200-foot strip.

Annotation: Deed to railroad company covering right of way, but otherwise appearing to be absolute conveyance, as conveying fee or easement. 84 A.L.R. 271.

Robbery — *force after taking.* In Williams v. State, 124 Ohio St. 585, 83 A.L.R. 439, 180 N. E. 58, it was held that one who, having had gasolene put into the fuel tank of his automobile at a filling station, drove away without paying for it, after forcibly dislodging the station attendant from the running board, did not commit robbery, the gasolene not having been procured by force, violence, or putting in fear.

Annotation: Appropriation or removal without payment of property delivered in expectation of immediate cash payment, as criminal offense. 83 A.L.R. 441.

Scottsboro case — *counsel for accused.* In Powell v. State, 287 U. S. 45, 84 A.L.R. 527, 77 L. ed. (Adv. 78), 53 S. Ct. 55, it was held that the right of persons charged with crime to be represented by counsel at their trial is in substance denied where, on being arraigned, they were not asked whether they had or were able to employ counsel, or wished to have counsel appointed, or whether they had friends or relatives who might assist in that regard if communicated with, and until the morning of the trial no lawyer had been named or definitely designated to represent them, the court having at the time of their arraignment merely charged "all the members of the bar" to represent them.

Annotation: Brevity of time between assignment of counsel and trial as affecting question whether accused is denied right to assistance of counsel. 84 A.L.R. 544.

Strikes — *sympathetic strike.* In Bricklayers' Union of America v. Ruff & Sons, 160 Md. 483, 83 A.L.R. 448, 154 Atl. 52, it was held that the right of an employer to pursue his calling is infringed by the refusal of his employees to work on a contract unless the person with whom he has contracted will refrain from employing nonunion labor on other jobs.

Annotation: Sympathetic strikes. 83 A.L.R. 485.

Trusts — *provision limiting liability of trustee.* In North Adams National Bank v. Curtiss, 278 Mass. 471, 83 A.L.R. 607, 180 N. E. 217, it was held that a testamentary provision exonerating from personal responsibility for any loss resulting through any act done or investments made in good faith, the trustees of a trust created by the will to pay over the net income to testator's daughter for life and, if she should die without leaving issue, then to pay over the principal to her nephews and nieces in such shares and upon such terms and conditions as the daughter should by will appoint, covers acts or omissions after the death of the daughter unless the trustee has forfeited such protection by acting in bad faith, or by negligently failing to turn over the trust property within a reasonable time.

Annotation: Provisions of will or other trust instrument exempting trustee from or limiting his liability. 83 A.L.R. 616.

Usury — *effect of acceleration clause.* In J. E. Shropshire v. Commerce Farm Credit Company, 120 Tex.

400, 84 A.L.R. 1269, 30 S. W. (2d) 282, it was held that a pecuniary obligation is usurious which gives a creditor an option, in case of the debtor's default in discharging annual instalments of interest, to require the payment of a sum exceeding the amount of the debt and legal interest thereon, where a statute defines interest as the compensation allowed by law or fixed by parties to a contract for the use or forbearance or detention of money.

Annotation: Usury as affected by acceleration clause. 84 A.L.R. 1283.

White Slave Act — *woman as guilty of offense.* In Gebardi v. United States of America, 287 U. S. 112, 84 A.L.R. 370, 77 L. ed. (Adv. 63) 53 S. Ct. 35, it was held that mere agreement on the part of the woman to her transportation and its immoral purpose is not such aid or assistance as will subject her to the penalty imposed by the Mann Act (36 Stat. at L. 825, chap. 395, U. S. C. title 18, § 397) on anyone who shall aid or assist in obtaining transportation for or in transporting in interstate or foreign commerce any woman or girl for immoral purposes.

Annotation: Criminal responsibility of woman who connives or consents to her own transportation for immoral purposes. 84 A.L.R. 376.

Witnesses — *examination by court.* In People v. Giacomino, 347 Ill. 523, 84 A.L.R. 1168, 180 N. E. 437, it was held that where a cause is tried before a jury, the trial judge must not indulge in extensive questioning of a witness, or indicate by his conduct either favor or disfavor towards parties or witnesses; and where a jury is waived he should not discomfit and confuse witnesses by his questions.

Annotation: Propriety of conduct of trial judge in propounding questions to witnesses in criminal case. 84 A.L.R. 1172.

Shall China Have An Uniform Legal System

(*Continued from page nine*)

laws particularly affecting aliens and those relating to labor, agriculture and other forms of industry.[15] Most of this legislation has been translated into English and other European languages and is thus accessible to foreign residents. In a future number of this periodical I hope to discuss it in greater detail.

Some foreigners will doubtless claim that this new legislation is not generally enforced by the Chinese themselves—that in the interior the *sien* magistrates still apply the old, customary law and that it will be years before these new codes will actually become operative. To my mind that claim, even if correct, would afford no reason whatever why the foreign courts should not apply them. Indeed such application should be a distinct advance in the process of modernization; for the Chinese of today are prone to follow foreign example and the spectacle of foreign judges construing and enforcing their laws would appeal to the national pride. Anyhow, if the laws are as satisfactory in form and substance as they seem to be, the foreigners could well observe them whether all Chinese do or not, just as in Egypt the mixed courts apply the Egyptian codes.[16]

To show that I am not alone in advocating this change, I will refer to an article by my friend and former colleague, Sir Skinner Turner, who was Chief Judge of the British Supreme Court in China during a considerable part of my service there, and who said:[17]

> "One of the recommendations of the International Commission was that consular courts should administer and apply certain of the laws and regulations of China. Mr. Keeton has criticized this recommendation as being likely to lead to difficulties when other than Chinese plaintiffs come into the court. It was never intended that this recommendation should mean more than the application of Chinese Statute Law when practicable. Just as British courts now administer Chinese Land Law, so they might administer a Chinese Law of Contracts. At present, in Kashgar, the British court applies the Indian Penal Code: in the rest of China the English Criminal Law is enforced. Why not the Chinese Penal Code? This plan would not involve any knowledge by consular judges of the laws of other states when their nationals were plaintiffs; and it is known that consuls, who now sit on the Provisional Court in Shanghai, do administer the Chinese

[15] See Lo-Hoai, La Nouvelle Législation Chinoise (Paris, 1932) reviewed by the present writer, Am. Journ. of Int. Law, XXVII, 197.

[16] See Brinton, The Mixed Courts of Egypt (1930) Ch. IX.

[17] 52 British Year Book of Int. Law (1929) 63, 64.

Penal Code. Such a policy, if carried out, would accustom the foreigner to the territorial laws of the country in which he is; and as China progresses in the codification of her laws, the increasing application of those laws could regularly follow until the time had come for the final abandonment of Extraterritorial Jurisdiction in China and the submission of all residents there to the laws and the law courts of the country."

This, it will be seen, was written before the extensive legislation of the last four years and is much more applicable today. The reform thus proposed would require, for the present, no change in the organization or jurisdiction of the foreign courts in China. All that is recommended is that they should apply the new and modernized Chinese legislation. It would not even be necessary to revise our treaties with China in order to effect the change. For our original treaty [18] of 1844, by which our extraterritorial privilege was acquired, provides (Art. XII), that

> "Citizens of the United States who may commit any crime in China, shall be subject to be tried and punished only by the consul or other public functionary of the United States, thereto authorized according to the laws of the United States."

Clearly he could be "authorized according to the laws of the United States" to try and punish by Chinese law. Again, under Art. XXV of the same treaty,

> "All questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction, and regulated by the authorities of their own government."

Such questions would be "regulated" by slight amendments of the act creating the United States Court for China. Sec. 4 now contains the following:

> "Jurisdiction of the United States Court for China, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with the treaties and *the laws of the United States* now in force in reference to the American consular courts in China. . . . But in all such cases, when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, *the common law and the law* as established by the decisions of the courts of the United States, shall be applied by said court in its decisions and shall govern the same, subject to the terms of any treaties between the United States and China."

In place of the first italicized phrase above, it would suffice to substitute "written laws of China;" and in place of the second italicized phrase, the "laws of the United States" (which now has a well defined meaning) [19] could be retained as providing a residuary and supplementary body of legislation, applicable in the improbable event that some case might arise in our courts to which no Chinese law is applicable.

[18] Malloy, Treaties and Conventions of the United States (1904) I. 202.

[19] See Georgetown Law Journal, XX, 437 sq.

Nor would it be necessary to await the action of any other power. Our treaty with China is distinct from any other and the course above indicated would not affect the rights of other nations or their nationals. It is highly probable, however, that, if our government should lead the way, in this reform, others would quickly follow. The desire to win Chinese favor and to extend their trade in China, would stimulate all of the powers interested in that country to avoid being left in a position of apparent unfriendliness by refusing to join in such an obviously just and simple concession. Indeed, the greater probability is that some other power, advised of our intention, would seek to anticipate our action, and to obtain the advantage of priority which would otherwise be ours.

For no one who knows the Chinese psychology can doubt that such a concession, initiated by the United States, would greatly enhance our prestige with China and be regarded as a real step toward the much desired, and long discussed, abolition of extraterritoriality. Thus the United States government would

(1) Give tangible and substantial recognition to the genuine efforts of China during the present century to improve its laws and its "strong desire to reform its judicial system and bring it into accord with that of western nations;" [20]

(2) Provide the best possible opportunity for testing the merits of the new legislation, by subjecting it to the practical scrutiny of jurists trained in western law. If the former is defective in any respect, such a test would enable the defect to be remedied before the foreign courts are abolished;

(3) Enable these foreign courts to supply China with a collection of precedents construing the new codes and affording a guide for future interpretation;

(4) Help the Chinese to unravel the tangled web of extraterritoriality and remove its foremost evils, before they assume other burdens;

(5) Demonstrate that America's thirty year old agreement [21] "to give every assistance to such reform" was not a mere empty phrase nor an idle gesture; but a genuine expression of good will, sincere purpose and helpful co-operation.

(6) Constitute a practical step along the road to abolition, thus affording an earnest of complete fulfilment when "other considerations warrant it in so doing." [22]

A generation ago, under John Hay, America led the movement which prevented, at that time, the partition of China and preserved its integrity. That achievement seems, at this writing, to be seriously menaced; but America's part therein is all the more creditable by way of contrast. And today she has an opportunity to lead, without loss to herself or danger to others, a second movement which, if not so momen-

[20] Treaty of 1903, Art. XV.

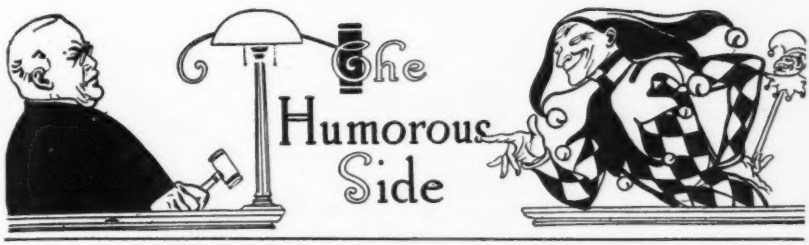
[21] Ib.

[22] Ib.

tous as the first, is all the more needed by reason of present conditions. For China never stood in greater need of outside assistance than now. A helping hand at this time—even a friendly gesture—toward the removal of internal difficulties, in this her hour of national peril, may afford the necessary encouragement to enable her to find herself, to bring herself together and to mobilize those inert but potential forces which abide in her as the oldest and most populous of nations. May the opportunity be utilized before it is too late!

Microscopic Fee

THE case of Smith v. Kenny (1899) 89 Ill. App. 293, involved a tax sale of "the east one-vigintillionth" of a forty foot lot, and a tax deed, in solemn form, purporting to convey the same. It was held that the purchaser acquired no interest in the premises, since the "land" purchased, "in comparison with which an oatmeal cracker is a valuable piece of property," was not capable of practical measurement or enjoyment, Adams, J., stating: "A common housefly could not find a footing on its surface, and to enjoy it, except for the purposes of litigation, such as the present, would require an eccentric and abnormally keen sense of enjoyment." And the court refers to another case (Glos v. Furman, 164 Ill. 585) in which the property sold for taxes was described as "the east vigintillionth of a vigintillionth of the east one sixty-fourth inch of lot 1."



Mingle a little folly with your wisdom.—Horace.

Avoirdupois of proof.—After hearing the evidence in a case in his Court, the aged, be-whiskered, tobacco-chewing Justice of the Peace leaned backward in his split-bottom chair and commented thusly:

"The Court has heard the evidence of the Plaintiff and it is his opinion that said evidence tends to support the contention of the Plaintiff. The Court has heard the evidence of the Defendant and it is his opinion that said evidence tends to support the contention of the Defendant, but it is the judgment of the Court that the evidence of the Defendant *does not thwart the avoirdupois* of the Plaintiff. Judgment is, therefore rendered in favor of the Plaintiff."

Hot from the Jokesmith.—The following seven clippings were sent us by Geo. H. Stipp, Los Gatos, California:

Barber—"Haven't I shaved you before, sir?"

Customer—"No, I got that scar in France."—*Christian Science Monitor.*

After a debt is contracted, it seems to expand.—*Chicago Times.*

Wife—"Wake up, John, wake up! There's a burglar in the next room."

Husband—"Well, I've no revolver. You go in and look daggers at him."—*Tit-bits.*

Some of the dry congressmen say the revenue from beer will amount to "only $125,000,000." When $125,000,000 is referred to as "only" usually it is taxpayers' money and a congressman speaking.—*Macon Telegraph.*

Teacher—"What are the products of the West Indies?"

Boy—"I don't know."

Teacher—"Come, come! Where do you get sugar from?"

Boy—"We borrow it from the next-door neighbor."—*El Padre (San Josè).*

Oh Lady!—Cop: "Hey, there; don't jam up traffic! Why don't you use your noodle?"

Lady: "I didn't know the car had one."
—*The Highway Traveler.*

Challenge the Jury.—Judge: "Defendant before your trial starts, you have a right to challenge any member of the jury."

Defendant: "Well, your Honor, I'd like to fight the little shrimp on the end."

A Zig Zag Boundary.—In examining a Title our contributor ran across the following description in a lease:

Premises: A certain bungalow upon Campbell's island in the county of Rock Island and State of Illinois, situate upon the premises known and described as follows:

Beginning at a point in the trail of Lieut. Campbell taken when pursued by one B. Hawk on the 19th day of July, 1814, thence double on said trail and run back to the point of intersection with the path of said B. Hawk and his warriors after their capture of a barrel of fire water on the date aforesaid, thence zig zag along said path in the manner of the aforesaid B. Hawk and band, to a point where a flock of blue jays sat near a sycamore tree, thence follow the flight of said Hawk to a point where, forseeing that his biography would be written by said party of the second part, he buried the hatchet and gave up the ghost, reference being had for greater uncertainty to the history of said occurrences as written by said party of the second part.

Contributor: Waldo M. Wissler,
Davenport, Iowa.

Id.—Excerpt from an opinion in the case of Polk v. State (Miss.) 142 Southern 480, the court said: "Appellants, . . . were convicted of a misdemeanor, gambling

in the court of a justice of the peace of Forest County. . . ."

Contributor: W. H. Cox.
Jackson, Miss.

The Omitted Comma.—On a State Road a party of travelers saw this sign "SLOW MEN WORKING," and a lady in the party remarked "No sign is necessary to see that."

Contributor: E. Burt Lenhart,
Decatur, Ind.

Collection Blues.—An attorney received the following letter in reply to a letter asking payment:

"In Regards to the Hoffer Co. we hawe for $10.09 brushes & sponges that is not good we cant sellthem your Salesman novs all aobout that if you are willing to give us some ellovence on thos goods we are willing to send a check for the ball."

Contributor: Lester J. Kramer,
Hoboken, N. J.

J. P. Justice.—In going through some old files recently, we came across a warrant written in 1928 which amused us at the time but which we had forgotten about. We feel that perhaps you have never seen a warrant like this and for this reason are enclosing same. The warrant is one in detinue or trover for specific personal property for *one house*. We remember that at the time our client informed us that he had never seen a warrant like that and we were forced to agree with him as we had never seen one in detinue for a house before. We felt that perhaps we would be able to convince the Justice of the Peace who wrote the warrant that a house was not personal property and that detinue would not lie and accordingly we went to his house prepared to make that defense promptly at 7 P. M. in accordance with the warrant. Upon our arrival we were informed by his wife that he was not in and that the law was that if the judge was as much as a minute late the warrant would have to be dismissed if the defendant insisted upon it. This was also new law to us, however we insisted upon our rights as the judge was more than one minute late and the warrant was dismissed.

Contributor: F. Gordon Hudgins,
Newport News, Va.

Case and Comment
THE LAWYERS MAGAZINE

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A True Story.—Backwoods Justice of the Peace (who is also the local pastor), haranguing a witness about whose credibility there seems some doubt:

J. P.—"Now, you tell exactly what you know about this case. You know what the Good Book says about liars. Suppose you don't tell the truth, and on the way home today your horse should run away and your buggy turn over, and you be killed? What would happen to you then? Where would your soul go? You'd be in danger of hell fire, that's what you would be; you'd stand before the Judgment Seat and you'd be condemned to everlasting punishment, and you know it. What have you got to say to that, now?"

Witness—"I didn't come in a buggy; I rode horseback."

Contributor: Mary G. Kite,
Secretary to Enoch A. Chase,
Washington, D. C.

Take Your Choice.—A recent case entitled *Goodale v. Beers* was entered in the Superior Court for Hampden County, Massachusetts, within a few days after the legalization of 3.2 per cent.

Contributor: Joseph A. Furey,
Palmer, Mass.

Probably Not.—In the trial of a lawsuit one of the attorneys had himself sworn as

a witness and opposing counsel demanded that the examination be made in the form of questions and answers. The examination proceeded at some length and the witness hesitated somewhat before replying to his question, whereupon opposing counsel piped up and said: "Your Honor, it appears that the witness does not understand the question."

Contributor: F. T. Lembke,
Hettinger, N. D.

Willing Waiver.—An ex-minister, who had been admitted to the bar came before the court with a default divorce case and the Court upon examining the files found that service had been made on the defendant outside the state and was defective, whereupon he informed said attorney that the Court would have no jurisdiction. The attorney therepuon replied: "Your Honor, the plaintiff is willing to waive the defect if we may proceed."

Contributor: F. T. Lembke,
Hettinger, N. D.

Autopsy Is Ordered.—After a physician had refused to give a death certificate, acting coroner A. Magruder MacDonald yesterday afternoon ordered an autopsy on 2000 block Fourth St., N. E.

Contributor: Richard A. Harman,
Washington, D. C.

Appropriate Receiver.—According to the Detroit Legal News: Chief Bell Diver was appointed receiver of a boat which had sunk at the dock.

Contributor: Raymond J. Kelly,
Detroit, Mich.

No Political Aspirations.—The following quotation from a brother lawyer in Illinois upon a suggestion that he make application for a political job.

"I would rather loaf in the bushes, and have the natives gather around in blue overalls, with corncob pipes, chewing tobacco, telling stories about Andy Jackson and Abe Lincoln, and letting the World go by, than to have all the damned offices within the gift of either of the distinguished occupants of the offices referred to in the first paragraph of this letter."

Contributor: Nelson B. Layman,
Du Quoin, Ill.

Letter in Reply to Notification of Successful Termination of Litigation.—Excoos it please, but really now, such noos as these is werry apt to bruise and stun, and have a pore bloke on the run. The jedge's verdict, I opine, shocked your mind, as it did mine, I'd checked the case off with a cross, considered it a total loss, and then to have you write and say, the doggone thing had gone our way, why—all I kin do is shout hooray.

The way the gears of justice run I spose about the year nineteen ninety one when I am old and gray and sere, or rotting in my lonely bier, the postman carelessly will fleck into my box a tary cheque; it won't be any good to me, but what a moral victoree!

A point or two I would admire to know sometime 'fore I expire; in your note about the soot, you speak of my share of the loot; now what is that and don't the court, allow of fees? It really ort; I do not really see just why, just because some reckless guy runs into me that I should pay for damages and, I say, the feller that makes all the trouble should be made to pay up double, or at least, it seems to me he ort to pay the lawyer's fee.

Well, I won't pass no more reflexions, but offer you my genuflections, and my thanks that did determine the jedge to favor,

Yours,

Signed *F. Merwin.*

Contributor: Chas. Luloff,
St. George, N. Y.

In Re: John and Johns.—In a case at Coalgate, Coal County, Oklahoma, on the 5th day of April, 1933, same being case No. 2744, State v. John Thomas, charged with pointing a pistol, the jury was empaneled and John File, John Pelton, John Brock, John Lacey, John Davis and O. Jennings were selected. When the witnesses were called for the State there were John O'Brian and John Bonner and when the defendant's witnesses were called, the defendant John Thomas and son, John Thomas, were used.

The jury was out only a short time and returned a verdict of not guilty.

This is a very interesting case on account of so many Johns, when as a matter of fact there was only one witness and one juror whose name was not John.

Contributor: Joseph G. Ralls, Jr.,
Atoka, Okla.

Deed Written in Rhyme.—A unique deed, willing to nine grandchildren a burial plot of one acre, in a Marsh Fork district cemetery, was found in the files in the county clerk's office. The deed is written entirely in poetry, and was composed on Christmas Day, twenty-three years ago, by John and Susan Laverty, who lived near Rock Creek in Marsh Fork district.

The whole of the deed follows, just as it is recorded in the files of the county clerk:

This deed is made on Christmas Day,
Nineteen hundred and ten,
Anniversary of the birth
Of Him who died for men,
Between John and Susan Laverty,
Who are husband and wife,
Parties of the first part,
Who are feeble now in life;
The parties of the second part,
We will now recall,
They are the names that follow,
Which number nine in all:
Londie M., Ben H., and Ott Gates,
Kelly Clay and Radie Clay,
And Emmett Harper next;
Montie Laverty, John Laverty,
And last is Grade Cook,
Which completes the text.

WITNESSETH:

That in consideration,
Of the affection and love,
We bear the nine grandchildren,
Which are named above,
We hereby give and grant
The following real estate,
With warranty that's general,
And which is situate,
In good old Raleigh county,
And in West Virginia state,
In the district of Marsh Fork,
Near where Rock Creek's waters prate,
And to be more definite,
We'll give you mete and bound,
So all may know exactly,
Just where the lines surround.

A technical description of the burial plot follows, giving the exact boundaries and yardage, and then the verse continues:

The tract above is granted,
Which we do now attest,
To themselves and loved ones,
For their final place of rest.

The same is meant to be conveyed,
Unto them and their heirs forever.
So that all may have their six by three,
When chords of life shall sever.
And witness now our signatures;
Our solemn seals of love,
And may there be reunion,
Unbroken up above.

Signed:

John Laverty.
Susan Laverty.

Contributor: Robert J. Ashworth,
Beckley, W. Va.

When Ardor Cooled.—Jenkins (angrily): "I'll law you to the Superior Court."

Judkins (smirkingly): "I'll be there."

Jenkins (furiously): "I'll law you to the Appellate Court."

Judkins (tantalizingly): "I'll be there."

Jenkins (beside himself): "I'll law you to the Supreme Court."

Judkins (enjoying the torture): "I'll be there."

Jenkins (all out of bounds): "I'll law you to hell!"

Judkins (quietly): "My lawyer will be there."

Contributor: Beatrice Katz,
Roxbury, Mass.

Training.—The man was trying to sell his dog.

"You see," he said, "I bought him and trained him myself. I got him so that he'd bark if a person stepped inside the gate, and I thought I was safe from burglars. Then my wife wanted me to train him to carry bundles, and I did.

"If I put a package in his mouth the dog would keep it there until someone took it away. Well, one night I woke up and heard movements in the next room. I got up and grabbed my revolver. Two men were there—and the dog."

"Didn't he bark?" interrupted the man.

"Never a bark; he was too busy."

"Busy? What doing?

"Carrying a lantern for the burglars."

—*The Kablegram.*

One-Track Mind.—The attorney shook his head.

"My dear man," he said, "there are hun-

dreds of ways of making money, but only one that's honest."

The banker looked puzzled.

"What's that?" he asked.

"Ah," smiled the other, "I thought you wouldn't know."—*Answers.*

Scotch Lawyer.—The Lawyer called his clerk and said to him, "Smith you have been employed by me for five years. To mark my appreciation of this you will henceforth be addressed as Mr. Smith."

Hard Worked Member.—Lawyer (to wife who had been to see the doctor): "But why are you so angry with the doctor, dear?"

Wife: "Why I told him I was tired, and he asked to see my tongue!"

Dad's Confession.—"Father," said the lawyer's small boy, "what is constructive criticism?"

"Constructive criticism, my son, is your own line of talk which, if offered by some one else, would be called ordinary faultfinding."—*Washington Star.*

Optimistic Outlook.—Her Father: "So you are in the Navy. What are your prospects for promotion?"

Plebe: "The best in the whole Navy, sir. My job is the lowest one we've got."

—*Annapolis Log.*

Already Punished.—Judge: Prisoner, explain how it is you stole those worthless articles and left a valuable gold watch close at hand untouched.

Prisoner (humbly): Don't find fault with me for that, your honor; my wife has been hard enough on me for it already.

—*New Zealand Leader.*

Shakespeare Knew, or Was It Bacon?—A correspondent sends to the *London Observer* the following evidence to prove that Shakespeare knew all about automobiles:

"Whence is this knocking?" ("Macbeth," II, 2.)

"Will this gear ne'er be mended?" ("Troilus and Cressida," I, i.)

"Thou hast wore out thy pump." ("Romeo and Juliet," II, 4.)

"Come let me clutch thee." ("Macbeth," II, 1.)

"And here an engine fit for my proceeding." ("Two Gentlemen of Verona," III, 1.)

"To climb steep hills requires slow pace at first." ("Henry VIII," I, 1.)

"O most wicked speed!" ("Hamlet," I, 2.)

"How dost thou know that constable?" ("Measure for Measure," II, 1.)

—*Exchange.*

Economy Wins.—It used to be said that whenever a Scot got to London he never went back home—except to fetch his brother. That notion is out of date, according to Lord Dewar, who remarked recently: "There are not nearly so many Scots traveling down to London as there used to be. They get born in London, nowadays, to save the fare."—*Watchman-Examiner.*

Order in the Court!—Judge (in dentist chair): "Do you swear that you will pull the tooth, the whole tooth, and nothing but the tooth?"—*Boston Transcript.*

Hard on the Nerves.—They were discussing a mutual lawyer friend.

"I feel very sorry for poor old Sandy," said Jock. "He had to give up smoking."

"For health reasons?" asked the friend.

"Yes, nerves," explained Jock.

"That's bad," said the other gravely. "I'd no idea that he smoked enough for that."

Jock smiled. "Well, it wasn't quite that," he said. "Sandy was always so afraid somebody would ask him for a cigarette."

—*Montreal Star.*

He'd Never Get Rich.—Victim (sadly): "I got that watch from a former employer after I'd been with him ten years."

Footpad: "Lumme, Guv'nor, you *was* slow, wasn't you!"

—*The Humorist (London).*

Depreciation.—A young business woman paid an obligation by checking on her account in "A" Bank. The party to whom she made the check deposited the same, that day, at "B" Bank which credited her with the same. "B" Bank unfortunately and through error of its staff, sent the check to

"C" Bank instead of "A" Bank, on whom it was drawn, and some three days elapsed before the check was returned to "B" Bank. On its return and on their discovery of the error, the following day they forwarded it to "A" Bank. However, on this day and before presentation, "A" Bank closed its doors and a day or so following "B" Bank followed suit.

Some time later the receiver for "B" Bank made demand for payment of the young business woman, the maker. She asked to be advised as to her obligation to pay and was told to inform the receiver that she did not consider herself obligated and refused payment. This did not deter the receiver from continuing persistent demands until finally, during the course of a phone conversation concerning the same, the receiver is quoted speaking as follows:

"Miss So and So, as a banker I wish to advise you that you had better pay this claim."

To which Miss So and So replys:

"Mr. Which and What, as a depositor I wish to advise that the people of this community do not think much of a banker's advice."

Contributor: F. Miller Cook,
Aberdeen, Wash.

Birds of a Feather.—In looking over a Petition filed in the case of Lida Taylor v. Clarence Taylor, one of the grounds for divorce is as follows: "Defendant associates with *other* immoral women, etc."

Contributor: Charles H. Wilson,
West Union, Ohio.

Free Divorce.—Mr. A. T. Ayres.

Dear Friend: am writing you in regards to a divorce from my wife who was recently sent to the State Industrial farm with an infectious disease. I have inquired around and have been told that I can get a divorce gratis. I haven't any money and if this is the case, Your honor I would sure appreciate if you would write & tell me so I can get loose. I have grounds aplenty to divorce 15 women. Hoping to hear from you soon, I remain your Friend.

Contributed by:
Hon. A. C. Ayres,
Judge, Thirteenth Judicial Dist.,
Howard, Kansas.

Sound Advice.—Judge A had just been appointed Police Judge. His first case was that of a bootlegger and after hearing the evidence against the individual the Judge decided to take the matter under advisement. Later that day while walking down the street he ran into an attorney named Mr. B who formerly occupied Judge A's present position.

"Hey, B," said he, "I've got a bootlegger over in the city jail and I don't know what to give him."

"Well," drawled Mr. B, "I wouldn't give him over $1.50 to $2.00 a quart for the stuff. That's all I ever pay."

Contributor: J. Arnold Cobley,
Sunnyside, Wash.

Truth Comes Out.—A broken arm and a weakness for telling the truth placed ——— ———, colored, in an embarrassing position, when he was arraigned in District Supreme Court yesterday on a robbery charge.

"How do you plead?" the clerk inquired.

"Not guilty," he answered in ringing tones.

Leaning down from the bench, Chief Justice Alfred A. Wheat asked what had happened to his arm, which he was carrying in a sling.

"The man broke it while I was trying to rob him, your honor," he replied.

Contributor: Mary G. Kite,
Secretary to
Enoch A. Chase,
Washington, D. C.

Remainder or reminder.—One of our salesmen called on an attorney and after being greeted cordially, heard the usual hard luck story, which is consistent with the times. He said that in addition to his general run of tribulations, he could recite a new one. It seems that he inherited from his grandfather a large block of stock in a local bank. This was considered quite a windfall until quite recently the bank notified him of a 30% assessment thereon, and he said, "What do you think of that for a piece of hard luck." To which our salesman replied: "It looks to me like a contingent remainder."